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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,539	12/12/2003	Bernard Charles Sekula	F6182(V)	2723

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EXAMINER

PEARSE, ADEPEJU OMOLOLA

ART UNIT PAPER NUMBER

1761

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/735,539	<b>Applicant(s)</b> SEKULA, BERNARD CHARLES	
	<b>Examiner</b> Adepeju Pearse	<b>Art Unit</b> 1761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lanner et al (US Pat. No. 6,352,732) in view of Wolf et al (US Pat No. 6,774,111), and Chau et al (US Pat. No. 6,517,886). With regard to claim 1, Lanner et al disclose a coating composition for food products comprising at least 7% by weight oligosaccharide including sucrose a form of oligosaccharide (col 5 lines 38-41) at a range from 14% to about 24% (col 10 lines 1-6), and corn syrup having a DE of at least from about 20 to about 65 at a range of about 11% to about 15% and water (col 9 lines 31-45, lines 55-59). Lanner et al failed to disclose a corn syrup at about 60%. However, it is well known in the art to utilize corn syrup at a range from about 50 to 95% for the purpose of providing nutrition as evidenced by Wolf et al (col 7 lines 4-16). It would be obvious to one of ordinary skill in the art to utilize this amount in order to provide nutrition and

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also function as a honey extender because it discloses similar components and weight percents as instantly claimed.

4. With regard to claim 2, Lanner et al disclose a coating composition for food products comprising at least 7% by weight oligosaccharide including sucrose a form of oligosaccharide (col 5 lines 38-41) at a range from 14% to about 24% (col 10 lines 1-6).

5. With regard to claim 3, lanner et al failed to disclose corn syrup from about 65 to 95% by weight. However, Wolf et al teach that it is well known to utilize corn syrup as a carbohydrate for nutrition purposes at a range from about 50 to 95% (col 7 lines 4-16). It would be obvious to one of ordinary skill in the art to utilize this amount in order to provide nutrition.

6. With regard to claims 4-5, Lanner et al disclose utilizing corn syrup having a DE of at least from about 20 to about 65 (col 9 lines 55-59).

7. With regard to claim 6, Lanner et al failed to disclose glucose or fructose at a range from 30% to 50%. However, Chau et al teach that it is well known to utilize these components at the recited ranges in a confectionery product comprising a saccharide-based component at a range from 16-75% including dextrose (glucose) and fructose (col 10 lines 13-19). It would be obvious to one of ordinary skill in the art to modify Lanner et al with Chau et al by utilizing these components as instantly claimed.

8. With regard to claims 7 and 8, Lanner et al failed to disclose maltose at less than 3.5% as a component. However, it is not seen how this amount is critical at this time and one of ordinary skill in the art would expect that the amount utilized would be an experimental result variable based on the other constituents that make up the composition.

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9. With regard to claim 9, Lanner et al disclose the presence of water at a range from amount 47% to 59% but failed to disclose water at a range from about 20 to 25%. However, one of ordinary skill in the art would expect that this is an experimental result variable based on the level of the other components in the composition.

10. With regard to claim 10, Lanner et al is silent as to the presence of viscosifier and non-nutritional sweeteners in the composition. It would be obvious to one of ordinary skill in the art to expect that these components are not present as instantly claimed.

11. Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond (US 2002/0187246) in view of Wolf et al (US Pat. No. 6,774,111). With regard to claim 11, Hammond discloses a low sugar honey comprising natural honey (0011) and an extender including 35 to 50% oligosaccharide (0015) and water (0019). However, Hammond failed to disclose corn syrup. Wolf et al teach that it is well known to utilize corn syrup having a DE of 20 or higher (col 5 lines 47-48) in combination with oligosaccharides (col 8 lines 56-67) at a range from about 50 to 95% for the purpose of providing nutrition as evidenced by Wolf et al (col 7 lines 4-16). It would be obvious to one of ordinary skill in the art to modify Hammond with the teachings of Wolf et al by incorporating corn syrup in order to provide nutrition benefits.

12. With regard to claims 12-13, Hammond discloses a honey at a range from 35 to 50% by weight (0013).

13. With regard to claims 14, Hammond is silent as to the display of sugar crystallization at ambient temperature. However, one of ordinary skill in the art would expect this to be an

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inherent property in the composition because it comprises similar ingredients at similar weight percents.

14. With regard to claim 15, Hammond discloses that the honey composition has color, flavor, texture and viscosity, which approximate that of natural honey (0012).

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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